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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212477
Party	Defendant GFA Brands, Inc.
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Submission	Testimony For Defendant
Filer's Name	Johanna M. Wilbert
Filer's e-mail	johanna.wilbert@quarles.com, deena.rafinski@quarles.com
Signature	/Johanna M. Wilbert/
Date	01/23/2015
Attachments	GFA's Notice of Filing of Sep. 19 2014 Certified Testimony Dep. Tr. and Exs. of Howard Seiferas.pdf(10286 bytes ) 2014-09-19 SEIFERAS Howard Trial Testimony Tr. and Exs 13-14.pdf(2556378 bytes ) 2014-09-19 SEIFERAS, Howard REDACTED Ex. 15.pdf(736473 bytes )

**UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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In the Matter of Application Serial No. 85/751,520: EARTH BALANCE  
Published for Opposition March 19, 2013

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BALANCE BAR COMPANY,

Opposer,

Opposition No. 91212477

v.

GFA BRANDS, INC.,

Applicant.

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**APPLICANT’S NOTICE OF FILING OF CERTIFIED TRIAL TESTIMONY  
DEPOSITION TRANSCRIPT AND EXHIBITS OF HOWARD SEIFERAS**

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Pursuant to 37 C.F.R. § 2.125(c) and Rule 703.01(k) of the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”), Applicant GFA Brands, Inc. hereby files with the Board, and notifies Opposer of the filing of, the certified testimony deposition transcript and accompanying exhibits of Howard Seiferas, whose testimony deposition was taken on September 19, 2014.

Pursuant to 37 C.F.R. §§ 2.125(e), 2.126(c), TBMP 703.01(p), and the Stipulated Protective Order, approved by the Board on February 20, 2014, the following testimony deposition exhibit has been designated as “Highly Confidential” and is being filed with the Board under seal, under separate cover: Exhibit No. 15.

Dated this 23rd day of January, 2015.

/s/ Johanna M. Wilbert

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*Attorneys for Applicant GFA Brands, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 23, 2015, I served upon counsel of record the foregoing  
by causing the same to be delivered by U.S. mail and email to:

R. Glenn Schroeder  
Schroeder Law PC  
110 Cooper Street #605  
Babylon, New York 11702  
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Dated this 23rd day of January, 2015.

/s/ Johanna M. Wilbert

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Deposition of Howard Seiferas  
UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
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In the Matter of Application  
Serial No. 85/751,520: EARTH BALANCE  
Published for Opposition March 19, 2013  
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BALANCE BAR COMPANY,

Opposer,

v.

GFA BRANDS, INC.,

Applicant.  
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DEPOSITION OF: HOWARD SEIFERAS  
Friday, September 19, 2014

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A P P E A R A N C E S

BY: R. GLENN SCHROEDER, ESQ.

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# E X H I B I T S

EXHIBIT	EXHIBIT	PAGE
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# I N D E X

WITNESS - HOWARD SEIFERAS

DIR CROSS

By Mr. Cross 5

By Mr. Schroeder 16

## INFORMATION AND/OR DOCUMENTS REQUESTED

INFORMATION AND/OR DOCUMENTS	PAGE
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None

QUESTIONS MARKED FOR RULINGS

PAGE	LINE	/	PAGE	LINE
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None



7  
8

10 BY MR. CROSS:

12           A.       Howard Brian Seiferas.

14                      A .                      I am 60 .

16                   A.           GFA Brands, Inc.

18           A.           SVP Sales Services and Logistics.

21           A.       That is correct.

24           A.       I oversee the order to cash  
25   basically.   So what that is is from the time

25           A.       Yes, in 2005 is when we first

24           A.       This is the wrapper or the film  
25   for the individual selling unit.

2 Q. For the fruit bar product?

3           A.       For the fruit bar product,

4 correct.

5 Q. Does Exhibit 13 accurately reflect  
6 what you recall the packaging to be for that  
7 product?

8                    A.            Yes.

9           O.       And Exhibit 14 what is that?

10                   (Whereupon, the Witness looked at  
11           the aforementioned exhibit.)

12           A.           This was the sales flier that we  
13   used for our presentation and to send to  
14   stores and buyers.

15           Q.       What is shown in the top maroon  
16   box?

17           A.       This package right here?

18 Q. Yes.

19           A.           What that is is the selling caddie  
20   that would go in the store shelves, give us a  
21   bit of a banner for selling it. And we had  
22   individual selling units that consumers would  
23   buy from that caddie.

24 Q. Does Exhibit 14 accurately depict  
25 what you recall having seen as far as the

2 Earth Balance fruit bar caddie is concerned?

4 MR. CROSS: Let's have this marked  
5 as the next exhibit.

9 Q. I'm going to show you what the  
10 Court Reporter has marked as Exhibit 15. Can  
11 you tell us what that is please?

14           A.           This is a working agreement that  
15   we had with our co-packer. I don't know if  
16   this one is signed. Yeah, we did not operate  
17   with contracts, per se, so we would use a  
18   letter of agreement.

21                   A.       Yes.

24           A.       This is specifically for the Earth  
25   Balance fruit bars.

2 Q. This document is dated at the top  
3 March 19th, 2005. What was your role as far  
4 as keeping business records for GFA back in  
5 that time period?

10 Q. And what did you do with Exhibit  
11 15?

12           A.       I did nothing with it other than  
13   file it and preserve it.

14 Q. So it had been with your files  
15 since 2005?

16           A.       Absolutely, yes.

17 Q. Who was responsible for actually  
18 printing out or getting the hard copy  
19 available for use in this case?

20           A.           I did. I was requested if I had  
21   any documentation that would apply. So I was  
22   able to access my folder and reprint that.

23                    O.                    Exhibit 15?

24           A.       Exhibit 15, correct.

25 Q. Do you recall seeing Exhibit 15

24 Q. Did the Earth Balance fruit bars  
25 ever get past the test rollout?

2                      A .                      No .

4           A.           It would be based on the sales and  
5   evaluation of the sales potential. We did not  
6   feel that the sales were significant to  
7   justify additional rollout.

8 Q. Were you involved in the  
9 discussions internally at GFA about whether  
10 additional production and distribution of the  
11 Earth Balance fruit bars should occur?

12           A.       Not in the direct decision, but  
13   discussions about it I was aware, yes.

14 Q. So it never went to full  
15 production rollout because the product did not  
16 appear as if it were going to succeeded; is  
17 that correct?

18           A.       That is correct.

19 Q. Any feedback from the field at any  
20 point about why it wasn't selling well?

21           A.           The feedback that I was aware of  
22    was that the price point was too high, it was  
23    not a compelling item for the consumer at that  
24    price point.

25 Q. It wasn't good enough to pay the



2 price that you wanted to get for it?

5 Q. Well, why didn't you just lower  
6 the price?

12 Q. Do you recall any other reasons  
13 for discontinuing the fruit bar products that  
14 were being sold under the Earth Balance name?

16 Q. Do you recall approximately when  
17 the decision was made to stop selling the  
18 Earth Balance fruit bars?

19           A.           I would say that -- I know that we  
20   stopped selling it in 2006 because of the lack  
21   of sales, and I know that we ended up  
22   liquidating remaining inventory the beginning  
23   of the following year 2007.

24 Q. What do you mean by liquidating  
25 remaining inventory?

2           A.           What we did is we donated to  
3   America's Second Harvest the remaining  
4   inventory that we had in our possession.

7           A.           At that point because of the shelf  
8   life of the product, there was very little  
9   shelf life left, and our customers would not  
0   purchase something that does not have a  
1   certain amount of remaining shelf life.

14                      A.                      No.

20                      A .                      No .

21 Q. Are you aware of a letter that had  
22 been sent by lawyers for the Balance Bar  
23 Company in July of 2006 to Bob Harris of GFA  
24 complaining about the use of Earth Balance in  
25 connection with the fruit bars?

2           A.           I am aware of that letter now. I  
3 have seen it in the last couple of months.  
4 But I was not aware of it prior to that.

25 MR. SCHROEDER: Just give me a

5                   (Whereupon, a brief recess was  
6           taken.)

9 BY MR. SCHROEDER:

13                    A.            Very good.

18           A.       I know it was 2005 for sure, and  
19   it was towards the end of the year.

22           A.       I can only tell you from that  
23   start point to the point where we get rid of  
24   the remaining inventory. I know that happened  
25   in early 2007. So I don't know if sales

2 extended beyond 2006.

5           A.       Yes.

9                   A.           Yes.

11           A.           Our customer was United Natural  
12   Foods, Inc., UNFI, and they have different  
13   regions, so we sold it just in the western  
14   region.

16           A.           In their western region. That may  
17   go out a little bit broader, but they had --  
18   we sold it just to that one specific region of  
19   UNFI.

22           A.       Yeah, they had locations in the  
23   State of Washington, California and I know  
24   that they did in Colorado. I do not believe  
25   at the time they had Texas, which they

2 currently have, so I think it may have been  
3 just those areas.

4 Q. And do you know which stores the  
5 product actually appeared in?

6           A.       I do not know.

7 Q. Can you give me an idea of the  
8 amount of product that was sold to UNFI?

9           A.       No, I don't have a recollection of  
10   how much we sold, only that the sales from our  
11   perspective were limited.

12 Q. Is there a typical amount of  
13 product that you usually create to do one of  
14 these launches?

15           A.           Typically what we will do is an  
16   initial production run where we run the  
17   minimum that we had negotiated with our  
18   co-packer. And that is what we did in this  
19   case, we did have just that one production  
20   run.

21 Q. And do you recall what that  
22 minimum run would have been in terms of cases  
23 or units?

24                    A.            I do not.

25 Q. You testified earlier that you

4 A. Correct.

9           A.       That is correct.

14           A.           As a very small company, the owner  
15   of the company would be -- he would listen to  
16   other people, but it would really be his sole  
17   decision if we would continue production in  
18   selling a particular item.

19 Q. Would that be Mr. Harris?

20           A.       That is correct.

21 Q. Do you believe it likely that Mr.  
22 Harris would not have been aware of that  
23 letter at the time he made the decision to  
24 cancel this product?

25 MR. CROSS: Objection. Lack of





1                   Deposition of Howard Seiferas  
2           me either.

3

4                               (The deposition concluded at 11:15  
5           a.m.)

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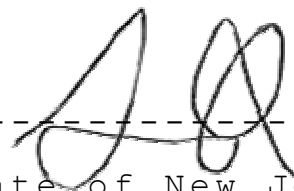
C E R T I F I C A T E

I, ADRIAN J. FEBRE, a Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, HOWARD SEIFERAS was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

-----  
Notary Public of the State of New Jersey  
My commission expires June 20, 2015




<b>A</b>	<b>aware</b> 12:13,21 14:21 15:2,4,6 19:2 19:22 20:10,11,18	<b>Brian</b> 5:12 <b>brief</b> 16:5 <b>broader</b> 7:7 17:17 <b>brought</b> 15:18 <b>business</b> 10:4,7 <b>buy</b> 8:23 <b>buyers</b> 8:14	<b>continue</b> 13:10 19:17 <b>contracts</b> 9:17 <b>Cooper</b> 3:6 <b>copy</b> 2:14 10:18 <b>correct</b> 5:21 8:4 10:24 12:17,18 16:17 19:3,4,8,9,20 <b>counsel</b> 22:18,20 <b>couple</b> 15:3 16:2 <b>Court</b> 1:22 2:7 7:19 9:8,10 <b>cover</b> 17:21 <b>covered</b> 20:20 <b>create</b> 18:13 <b>cross</b> 3:9 4:11,11 5:10 7:15 9:4 16:3 19:25 20:25 <b>CROSS-EXAMIN...</b> 16:8 <b>current</b> 5:17 <b>currently</b> 18:2 <b>custodian</b> 10:9 <b>customer</b> 6:3 17:11 <b>customers</b> 14:9
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1 I, HOWARD SEIFERAS, do hereby certify  
2 that I have read the foregoing transcript and that  
3 the same and accompanying amendment sheets, if any,  
4 constitute a true and accurate record of my  
5 testimony.

6  10/6/14  
7  
8 Signature of Deponent

9 ☒ No Amendments

10 ☐ Amendments attached

11  
12 Subscribed and sworn to before me this

13 Sixth day of OCTOBER, 2014.

14 Notary Public: 

15 Address: 83 OWEN ROAD

16 MAHWAH, NJ 07430

17  
18 My commission expires: OCTOBER 13, 2016

19  
20 Seal:

21  
22 MARTHAJEAN DRAGO  
23 NOTARY PUBLIC #2413496  
24 STATE OF NEW JERSEY  
25 MY COMMISSION EXPIRES 10.13.16



## ERRATA SHEET

INSTRUCTIONS: After reading the transcript of testimony, please note any change, addition or deletion on this sheet. DO NOT make any marks or notations on the actual transcript. (Use additional paper if needed and attach it to this sheet)

Please sign and date this errata sheet and return it to the \_\_\_\_\_.

<b>Case Name</b>	Balance Bar v GFA Brands
<b>Date Taken</b>	September 19, 2014
<b>Deposition of:</b>	Howard Seiferas
<b>Reporting Agency</b>	<b>Metropolitan Court Reporting Service Inc. PO Box 858, Maywood, NJ 07607</b>

<b>PAGE</b>	<b>LINE</b>	<b>CORRECTION</b>

DATE: 10/6/14  
SIGNATURE: Howard B. Seiferas

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.375"  
CRIMP SEAL  
AREA

.375"  
CRIMP SEAL  
AREA

5.498" REPEAT

**Nutrition Facts**

Serving Size 1 bar (40g)  
Serv per container: 1  
Calories 130  
Calories from Fat 5

Amount/Serving	%DV*	Amount/Serving	%DV*
Total Fat 0.5g	1%	Potassium 220mg	6%
Sat. Fat 0.5g	3%	Total Carb. 31g	10%
Trans Fat 0g		Fiber 4g	16%
Cholest. 0mg	0%	Sugars 24g	
Sodium 10mg	0%	Protein 0g	
*Percent Daily Values (DV) are based on a 2,000 calorie diet.			
Vitamin A 6% Vitamin C 20% Calcium 8% Iron 4%			



INGREDIENTS:  
Apple Puree,  
Apple Concentrate

US Patent 6027758  
Developed by USDA

NEW

All Natural

Nutritionally Equal to  
Two Whole Apples



100%  
PURE FRUIT  
BAR

**EARTH  
BALANCE**

Apple

NET WT. 40g

PARVE

No Added Sugar, Salt or Fat • Naturally High in Vitamin C  
Good Source of Dietary Fiber • Contains Natural Antioxidants  
Gluten Free

1.25 x .75"  
Lot Code  
Area

Distributed by: CFA Brands, Inc.  
Earth Balance Foods Division

PO Box 397, Cresskill, NJ 07626  
Manufactured in Washington's Columbia River Gorge  
Made from fruit grown in the Pacific Northwest, USA  
Developed & Patented by USDA

5.5" WEB

Applicant  
Exhibit 13  
BB v GFA  
No. 91212477

GFA\_EB000008



**NEW**



**EARTH BALANCE®**

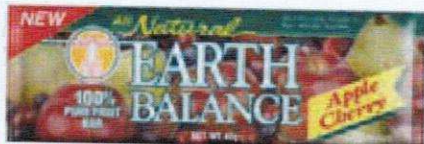
**100%  
FRUIT  
ENERGY!**

*ALL Natural*

- No Sugar, Fat, or Salt Added
- Each Bar Equivalent to 2 Fruits
- Naturally High in Fiber
- No Gums, Starch or Fillers
- All Vegan



**Available now in these five flavors...**



GFA Brands Inc., P.O. Box 397, Cresskill, NJ 07626-0397 • 201-568-9300 • Fax: 201-568-6374 • [consumermail@earthbalance.net](mailto:consumermail@earthbalance.net)

Applicant  
Exhibit 14  
BB v GFA  
No. 91212477

GFA\_EB000002



GFA / GD MEETING

March 19, 2005

This document summarizes the major terms of a Joint Venture Agreement between Gorge Delights and GFA Brands and suggests next steps with an associated timetable.

TERMS OF AGREEMENT

REDACTED

Applicant  
Exhibit 15  
BB v GFA  
No. 9/212477

SUGGESTED PLAN OF ACTION

REDACTED

PRELIMINARY TIMELINE (See EXHIBIT C)